

law or American law, except where American law directs.

In the *Leal* case, foreign law should not have been used to resolve the case because American law did not direct that foreign law apply.

When Justice Kagan appeared for her confirmation hearing, she stated that in deciding cases, “you’re looking at law all the way down, not your political preferences, not your personal preferences.”

However, the law in the *Leal* case is clear. Executive branch policy arguments and unenacted bills are not law.

I am not saying the Solicitor General or these Justices who dissented lied at their confirmation hearings or made a mockery of the confirmation process, but Judiciary Committee members foresaw cases such as *Leal* and asked the nominees to address the role of foreign law in constitutional cases. I believe, although they do not, what these individuals wrote in the *Leal* case is inconsistent with what they said at the time of their confirmation hearings.

Finally, one of these issues could arise again in a different legal context. Like the death penalty cases, there is ongoing litigation challenging the constitutionality of the Defense of Marriage Act. Like the death penalty cases, the Defense of Marriage Act is the subject of a bill. The particular bill—called the Respect for Marriage Act—notwithstanding its Orwellian name, would repeal the Defense of Marriage Act.

The Department of Justice has already decided not only to defend the Defense of Marriage Act but now argues the Defense of Marriage Act is unconstitutional. The Department, in light of its *Leal* brief, may be considering making the implausible argument the courts should strike down the Defense of Marriage Act simply because a bill has been introduced to repeal it—the same argument used in the *Leal* case before the Supreme Court.

You might well argue the introduction of a bill that is strongly supported by the administration is enough to lead courts to believe the Congress has already repealed the law anyway, so why not have the Court simply declare the law unconstitutional. The Department should not make such an argument, and I can tell the courts that, like the bill to make the Vienna Convention apply retroactively to convicted criminal defendants who face the death penalty, this Congress will not—and I repeat, will not—pass the Respect for Marriage Act and courts should not consider its introduction in resolving DOMA’s constitutionality.

Mr. President, obviously, I am disappointed the Obama administration has advanced policy arguments rather than legal arguments in the Supreme Court. How ridiculous it is to try to convince the Supreme Court that just because a bill is introduced they ought to make a decision based upon that bill being introduced.

In the absence of arguments based on American law, it should not have asked

the Court to rule based on policy. Rather, it should have either argued based on American law—even if American law did not conform to its view of desirable policy—or it should have declined to participate in the case.

I am also disappointed that four Supreme Court Justices voted to advance their views of policy rather than law, which is the essence of judicial activism. We were—or you could say we are—only one vote away from a Supreme Court majority that would have applied policy preferences in favor of international law rather than American constitutional law. We were only one vote away from a Supreme Court majority that would have usurped the separation of powers by considering a bill to be the same as a law that Congress passed. And we were only one vote away from a Supreme Court majority that would have applied the ruling of an international tribunal over which Americans have no say rather than a body—as in this Congress of the United States—that is representative of and answers only to the American people.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BLUMENTHAL). Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### HONORING OUR ARMED FORCES

SPECIALIST NICHOLAS P. BERNIER

Mrs. SHAHEEN. Mr. President, I rise today with deep sadness to pay tribute to the service and sacrifice of Army SPC Nicholas P. Bernier, who died on June 25, 2011, from injuries sustained during combat in Kherwar, Afghanistan, while supporting Operation Enduring Freedom. Specialist Bernier was a combat medic with Headquarters, Headquarters Company, 2nd Battalion, 30th Infantry Regiment, 4th Brigade Combat Team, 10th Mountain Division based out of Fort Polk, LA.

A native of East Kingston, NH, and 2007 graduate of Exeter High School, Nicholas or Nick, as he was called by those who knew him, enlisted in the U.S. Army shortly after graduation. Prior to his deployment to Afghanistan in October 2010, Nick provided medical care in Texas to wounded soldiers who had returned from overseas.

From a very young age, Nick stood out in his tight-knit community for his desire to help others. It was, therefore, no surprise to his friends and family when he answered the call to serve his country, to protect his fellow Americans, and to care for his brothers in arms as a medic on the frontlines in Afghanistan. This last assignment was, in fact, a natural fit for him.

Our Nation can never adequately thank Nick for his willingness to serve and to make the ultimate sacrifice defending the freedoms we hold dear. While words provide little comfort at such a time as this, I hope Nick’s family will find some solace in the deep appreciation all Americans share for Nick, for the life he lived and for the ultimate sacrifice he made in the service of others. He was a true American hero.

Nick is survived by his parents, Paul Bernier of East Kingston, NH, and Tina Clements of Haverhill, MA; two brothers, Bradley and Christopher, and half-sister, Brittany. He also leaves behind a caring extended family and a community that loved him.

I ask my colleagues and all Americans to join me in honoring the life, service, and sacrifice of SPC Nicholas P. Bernier.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO ASSISTANT SECRETARY INES R. TRIAY

• Mrs. MURRAY. Mr. President, it is with great privilege that today I honor and express my thanks to Dr. Inés Triay, Assistant Secretary for Environmental Management at the Department of Energy for her service to our country.

The Environmental Management Program at DOE has consistently been a priority for me during my tenure in the Senate, as Washington State is home to the Hanford Nuclear Reservation. As a part of the Manhattan Project, Hanford produced plutonium from 1944 until 1987, and the efforts of Hanford workers and the Tri-Cities community helped end World War II.

Today, under the leadership of Dr. Triay, Hanford workers are involved in an environmental cleanup project of enormous scale necessitated by the processes required to transform raw uranium into plutonium for bombs. These processes generated billions of gallons of liquid waste and millions of tons of solid waste which must now be cleaned up, removed, or remediated. Dr. Triay and her staff have worked closely with both the Richland Operations Office and the Office of River Protection to ensure cleanup efforts at Hanford continue to move forward in a meaningful and timely fashion.

Inés has devoted her career to the safe and timely cleanup of radioactive waste and facilities from our Nation’s Cold War nuclear weapon production and research sites. Inés, a Cuban-born

immigrant who earned her Ph.D. in chemistry, has worked at DOE for 24 years, rising from her position as a scientist at Los Alamos National Laboratory to Assistant Secretary for Environmental Management, a Presidentially nominated, Senate-confirmed position. During her tenure as Assistant Secretary, she has led the largest, most diverse, and technically complex environmental cleanup program in the world.

One of Inés' greatest successes came after Congress invested \$6 billion in the Environmental Management Program. Inés led the effort to accelerate important cleanup projects to reduce the Environmental Management footprint across the country. The success of this investment has been, by all measures, incredible—Inés and her team were able to reduce the footprint of the entire Environmental Management complex by 50 percent.

For the past several years, I have worked closely with Inés and I have seen firsthand her commitment to making sure the federal government meets its obligations to protect the health of our communities at Hanford and around the country. Her professionalism, passion and knowledge has contributed significantly to the successes of the Environmental Management Program in recent years, and I will miss working with her and her staff on a daily basis.

On behalf of all Washingtonians, and on behalf of our country, I thank Inés for her dedication to the mission of the Environmental Management Program, for her passion and expertise, and for her commitment to the safety and well-being of the people working at Hanford and at Environmental Management sites around the country. Inés will be difficult to replace. I congratulate Dr. Triay on all of her successes as Assistant Secretary for Environmental Management and wish her the best of luck moving forward.●

#### REMEMBERING DAVID GETCHES

● Mr. UDALL of Colorado. Mr. President, a few days ago, I came to the Senate floor to honor one of Colorado's great educators and community leaders, David Getches, who passed away on Tuesday, July 5, 2011, at the too-young age of 68. Today, I would like to add further to my earlier remarks so that I may provide an even fuller picture of David's life.

This is more than a poignant moment for me. I originally had planned to come to the floor to discuss David's career and character because he was stepping down after 8 very productive years as the dean of the University of Colorado Law School.

We all have had this terrible experience in our lives when somebody whom we love and respect suddenly finds they have a cancer that is aggressive—beyond aggressive. Literally a month ago, David was diagnosed with pancreatic cancer. In the 4 weeks since

that time, that cancer stole him from us. But he was always upbeat. He was always someone who we looked to for enthusiasm and inspiration. I will be inspired in my remarks by what he did. I will attempt not to dwell on his loss.

As I said, David served as dean of the Colorado Law School for the last 8 years. With him at the helm, CU Law became one of the most forward-looking institutions of legal training in the country. I want to share a few examples of his vision and leadership. I could not cover all of them if I had a full hour. I want to share some of them with the Senate and with his friends and admirers in Colorado.

He steered the law school through the construction of the new LEED Gold Certified Wolf Law Building, which put CU and its law school at the cutting edge of environmental sustainability and energy efficiency—two ideas that were connected to the values that David was committed to fostering throughout his career. David previously served as executive director of the Colorado Department of Natural Resources and as an adviser to the Interior Secretary in the Clinton administration. He had an extensive background in water, environmental, and public lands law. Through his work, David impressed upon all Coloradans the importance of good stewardship of our State's precious natural resources.

I am not a lawyer, but I do know David's efforts to teach and share the legal framework that protects our resources could not have been more critical to preserving our Western way of life.

David left a lasting impression on the demographic composition of CU Law School. He was committed to a student body composed of people from many different backgrounds and cultures, and that commitment made an indelible impact on the school and on Colorado's legal community. In 2008, the Hispanic Bar Association awarded him their Community Service Award for increasing Hispanic enrollment, and he also assembled one of the most diverse administrative teams of any law school in the country. He didn't stop there, however. He then created a commission to produce a groundbreaking report on diversity in the legal profession and how to increase diversity in law firm recruitment. The highly skilled and diverse alumni of the CU Law School reflect his efforts and successes.

Moreover, David built a legacy of access to legal education for all. He worked to expand scholarships and financial aid awarded by the law school to worthy students regardless of their financial background, increasing scholarship awards from \$600,000 in 2004 to a hefty \$2.1 million in 3 short years by 2007. This came during a period of time where David expanded alumni giving and oversaw a 110-percent increase in the law school's endowment. And all the while, he continued to recruit and retain top-notch faculty to guide students in their legal education and produce world-class scholarship.

In 2008, David worked with the Colorado State Legislature to pass a law allowing public universities to offer loan repayment assistance grants to graduates practicing public interest law and more recently founded an endowment to award grants to CU Law School graduates in the public sector. These actions reflected David's strong belief in training and inspiring future leaders to give back to their communities.

What David did by reducing the cost of law school was make public service a viable alternative to private practice for bright, idealistic graduates of the law school. Without question, those students, CU Law School, the State of Colorado, and I would venture to say the country will reap the benefits in the future from David's foresight and thoughtful investments.

David's contributions went beyond his tenure as dean, and he had more than an academic interest in the critical issues of our time, especially environmental protection, civil rights, and social justice. He put his social and conservation ethics to work every day, using the law to foster a fair and livable world. As a very young attorney with California Indian Legal Services, David represented tribal members in the State of Washington who were being arrested for exercising their centuries-old treaty rights to fish. David, alongside his clients, devised a strategy to breathe life into the legal promises made to tribes, and the results he achieved changed the face of fisheries and water management in the Northwest. His legal work helped create modern Indian law and will have an everlasting imprint on natural resources management in the Northwest. He later became the founding executive director of the Native American Rights Fund, the leading nonprofit organization dedicated to tribal sovereignty, economic self-determination, and defense of treaty rights.

David was passionate about protection of the environment, especially the spectacular landscapes, wild country, and treasured wildlife of the West. As a water law expert, David was visionary with respect to the changing needs of the West. He had a particular devotion to the Colorado River Basin and strove to find ways to meet human demands for the river's waters while conserving its fish and wildlife and other environmental values. He expressed his love for the West through service on the boards of directors of the Grand Canyon Trust, the Wilderness Society, and Defenders of Wildlife. He was the founding board chair of the Land and Water Fund of the Rockies, now called Western Resource Advocates, and helped grow that fledgling organization into an important regional voice for clean energy and wise stewardship of the region's lands and waters. He gave his time, energy, and thoughtful creativity to each organization and all have expressed gratitude for his wise counsel.